

IN THE  
**Supreme Court of the United States**

October Term, 1977.

No.

**77-308**

Supreme Court, U. S.

**FILED**

**AUG 22 1977**

**MICHAEL RODAK, JR., CLERK**

Philadelphia Newspapers, Inc., The Associated Press, Central States Publishing, Inc., The Pennsylvania Newspaper Publishers Association, The Pennsylvania Society of Newspaper Editors, and The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, *Appellants,*

*v.*

The Honorable Domenic D. Jerome, Judge of the Court of Common Pleas of Delaware County, Pennsylvania

*and*

Equitable Publishing Company, Inc., The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, The Pennsylvania Newspaper Publishers Association and The Pennsylvania Society of Newspaper Editors, *Appellants,*

*v.*

The Honorable Lawrence A. Brown, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania

*and*

Montgomery Publishing Company, *Appellant,*

*v.*

The Honorable Lawrence A. Brown, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania

*and*

Equitable Publishing Company, Inc., The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, The Pennsylvania Newspaper Publishers Association, and The Pennsylvania Society of Newspaper Editors, *Appellants,*

*v.*

The Honorable Robert W. Honeyman, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania

*and*

Montgomery Publishing Company, *Appellant,*

*v.*

The Honorable Robert W. Honeyman, Judge of the Court of Common Pleas of Montgomery County, Pennsylvania.

Appeal From the Judgments of the Supreme Court of Pennsylvania.

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## REFERENCE TO OPINIONS BELOW.

The Court below rendered no opinions.

The Judgments sought to be reviewed were entered by the Supreme Court of Pennsylvania. Appellants were advised by the Supreme Court of Pennsylvania that it had endorsed upon their Petitions for Writ of Mandamus and Prohibition the following Orders:

“Denied  
s/ By the Court”

Letters from the Supreme Court of Pennsylvania to Appellants giving notice of entry of the aforesaid Orders are appended hereto as Exhibits 1 through 5.



### STATEMENT OF GROUNDS FOR JURISDICTION.

This Court has jurisdiction over these appeals, pursuant to 28 U. S. C. § 1257(2) in that these appeals are taken from Orders of the Supreme Court of Pennsylvania upholding the validity of Pennsylvania Rules of Criminal Procedure against claims of repugnancy to the Constitution of the United States, specifically, the First, Fifth, Sixth and Fourteenth Amendments thereto. The Pennsylvania Rules of Criminal Procedure are the equivalent of statutory enactments by the Legislature, have the force and effect of law, and all laws inconsistent with the Rules are deemed suspended. Constitution of the Commonwealth of Pennsylvania, Article V, § 10(c).

The proceedings below were brought to gain access by the press and public to pretrial suppression hearings in three separate criminal proceedings. In *Philadelphia Newspapers, Inc., et al. v. The Honorable Domenic D. Jerome*, the Pennsylvania Supreme Court on March 23, 1977 denied Petitions seeking vacation of the trial court's orders closing pretrial hearings and sealing and impounding all papers, documents and records filed in the case of *Commonwealth of Pennsylvania v. W. A. "Tony" Boyle*, Court of Common Pleas of Delaware County, Pennsylvania, Nos. 650A, 650B and 650C. Similar orders were entered on June 20, 1977 in *Equitable Publishing Company, et al. v. The Honorable Robert W. Honeyman*; *Montgomery Publishing Company v. The Honorable Robert W. Honeyman*; *Equitable Publishing Company, et al. v. The Honorable Lawrence A. Brown*; and *Montgomery Publishing Company v. The Honorable Lawrence A. Brown*.

Notices of Appeal were filed on August 5, 1977 in the Supreme Court of Pennsylvania. The Notices of Appeal

are appended hereto as Exhibits 6 through 10. This single jurisdictional statement is filed on behalf of five separate appeals from the Orders of the Supreme Court of Pennsylvania involving identical or closely related questions, in accordance with Rule 15(3) of this Court.

The text of the Pennsylvania Rules of Criminal Procedure whose validity is challenged by this appeal is as follows:

#### "Rule 323. Suppression of Evidence

(a) The defendant or his attorney may make application to the court to suppress any evidence alleged to have been obtained in violation of the defendant's constitutional rights.

(b) Unless the opportunity did not previously exist, or the interests of justice otherwise require, such application shall be made only after a case has been returned to court and not later than ten days before the beginning of the trial session in which the case is listed for trial, except that in any judicial district having continuous trial sessions said application shall be filed not later than ten days before the day the case is listed for trial. If timely application is not made hereunder, the issue of the admissibility of such evidence shall be deemed to be waived.

(c) Such application shall be made to the court of the county in which the prosecution is pending.

(d) The application shall state specifically the evidence sought to be suppressed, the specific constitutional grounds rendering the evidence inadmissible, and shall state with particularity the facts and events in support thereof.

(e) Upon the filing of such application, a judge of the court shall fix a time for hearing, which may be

either prior to or at trial, and which shall afford the attorney for the Commonwealth a reasonable opportunity for investigation and answer, and shall enter such interim order as may be appropriate in the interests of justice and the expeditious disposition of criminal cases.

(f) *The hearing, either before or at trial, shall be held in open court unless defendant, by his counsel, moves that it be held in the presence of only the defendant, counsel for the parties, court officers and necessary witnesses. In any event, the hearing shall be held outside the hearing and presence of the jury. In all cases the court may make such order concerning publicity of the proceedings as it deems appropriate under Rules 326 and 327.*

(g) *A record shall be made of all evidence adduced at the hearing. The clerk of court shall impound the record and the nature and purpose of the hearing and the order disposing of the application shall not be disclosed by anyone to anyone except to the defendant and counsel for the parties. The record shall remain thus impounded unless the interests of justice require its disclosure.*

(h) The Commonwealth shall have the burden of going forward with the evidence and of establishing the admissibility of the challenged evidence. The defendant may testify at such hearing, and, if he does so, he does not thereby waive his right to remain silent during trial.

(i) At the conclusion of the hearing, the judge shall enter on the record a statement of findings of fact and conclusions of law as to whether the evi-

dence was obtained in violation of the defendant's constitutional rights, and shall make an order granting or denying the relief sought.

(j) If the court determines that the evidence is admissible, such determination shall be final, conclusive and binding at trial, except upon a showing of evidence which was theretofore unavailable, but nothing herein shall prevent a defendant from opposing such evidence at trial upon any ground except its admissibility." (emphasis added).

*"Rule 326. Special Orders Governing Widely-Publicized or Sensational Cases*

In a widely-publicized or sensational case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order. In such cases it may be appropriate for the court to consult with representatives of the news media concerning the issuance of a special order."

19 Pa. S. (1977) Rules Supp.)

Pursuant to the provisions of 28 U. S. C. § 2103, appellants ask the Court to regard this Jurisdictional Statement as a Petition for Writ of Certiorari in the event it is determined that this appeal has been improvidently taken.



## QUESTIONS PRESENTED.

1. <sup>Are</sup> Whether the provisions of Pennsylvania Rules of Criminal Procedure 323(f) and (g), which permit the closing of a pretrial hearing at the request of a criminal defendant and mandate the impoundment of all records of the hearing, ~~are~~ void on their face because they deny, in violation of the First, Sixth and Fourteenth Amendments, the public's right to be contemporaneously informed about court proceedings, such denial being effected without hearing and with no showing as to (a) the nature and extent of pretrial news coverage and the potential for prejudice to the criminal defendant, and (b) whether other measures could protect the defendant's right to a fair trial without obliteration of the rights of the press and public?

<sup>Are</sup> (2.) Whether Pennsylvania Rules of Criminal Procedure 323 and 326, pursuant to which the trial courts entered orders which (i) closed their courtroom, (ii) sealed official court records, and (iii) prohibited parties, witnesses, attorneys and others from communicating with the press, thus totally prohibiting, with no hearing or showing of potential prejudice, publication of any news concerning important criminal trials and pre-trial proceedings, ~~are~~ void as applied in that they effect impermissible prior restraints on publication in violation of the First and Fourteenth Amendments.

## STATEMENT OF THE CASE.

I. Philadelphia Newspapers, Inc., et al.<sup>1</sup> v. The Honorable Domenic D. Jerome, Judge of the Court of Common Pleas of Delaware County.

This action arose from proceedings in the re-trial of W. A. "Tony" Boyle, former President of the United Mine Workers of America, in the Court of Common Pleas of Delaware County, Pennsylvania. Mr. Boyle's first trial, which resulted in a conviction for the execution-style slayings of a rival for union office and members of his family, received nationwide attention. The conviction was reversed by the Pennsylvania Supreme Court,<sup>2</sup> and a new trial ordered. On March 28, 1977, during pretrial proceedings on remand, the trial court entered a comprehensive order prohibiting parties, attorneys and their associates, all public officials and others from, *inter alia*, releasing extrajudicial statements relating to the case, commenting upon any evidence and disseminating any documents the admissibility of which may have to be determined by the Court. On May 2, 1977, "all papers,

1. The parties below were:

Philadelphia Newspapers, Inc., publisher of *The Philadelphia Inquirer* and *Philadelphia Daily News*, newspapers of general circulation throughout Pennsylvania and the Delaware Valley region; The Associated Press, a New York non-profit association which is the largest gatherer of news in the United States; Central States Publishing, Inc., publisher of *The Delaware County Times* of Delaware County, Pennsylvania; The Pennsylvania Newspaper Publishers Association; The Pennsylvania Society of Newspaper Editors; and The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, which are professional associations of Pennsylvania journalists.

2. *Commonwealth v. Boyle*, 386 A. 2d 661 (Pa. 1977).

documents and records filed and to be filed in this matter" were ordered sealed and impounded.<sup>3</sup> Also on May 2, 1977, the trial court orally ordered the courtroom cleared of all representatives of the press and public and thereafter commenced hearings on defense suppression motions behind closed doors. All of these orders were entered at the request of the defense and with the concurrence of the Commonwealth. No hearing was held, no finding of potential prejudice was made, and no alternative and less restrictive methods of insuring a fair and impartial trial were considered.

On May 4, 1977, appellants filed a Petition to Vacate the trial court's orders. The trial court signed a Rule, returnable on May 9, 1977, *after* the scheduled completion date of the suppression hearings. Appellants thereupon filed with the Supreme Court of Pennsylvania, on May 4, 1977, Petitions for Writ of Mandamus and Prohibition and for Plenary Jurisdiction.<sup>4</sup> In these Petitions, appellants asserted that the trial court's orders infringed upon free speech and violated the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution by spreading a pervasive cloak of secrecy over an important criminal trial with no showing of potential prejudice to the defendant's right to a fair trial.

On May 9, 1977, the trial court heard argument on the Petition to Vacate. Appellants contended specifically that the Pennsylvania Rules of Criminal Procedure were un-

3. Because of the impoundment order, the orders themselves were not made available to appellants until released by the trial court for the purpose of this litigation.

4. The Petition for Plenary Jurisdiction was filed pursuant to § 205 of Pennsylvania's Appellate Court Jurisdiction Act, 17 Pa. S. § 211.205, which provides for the assumption by the Supreme Court of plenary jurisdiction over matters of immediate public importance with authority to enter orders to "cause right and justice to be done."

constitutional (Transcript of Hearing Before The Honorable Domenic D. Jerome in *Commonwealth v. W. A. "Tony" Boyle*, May 9, 1977, p. 15). Appellants also asserted that prior to the entry of orders which closed the courtroom, sealed all records and imposed a "gag", a hearing should have been held to determine the propriety of the orders under the circumstances and to ascertain whether "more narrow orders could be drawn which might protect the rights of the defendant without unduly infringing upon the rights of the press" (*Id.* at pp. 9-10). The trial judge ruled that he was obligated to accord *prima facie* validity to the Pennsylvania Supreme Court's Rules, and denied the Petition to Vacate.

On May 23, 1977, the Pennsylvania Supreme Court denied both Petitions for Mandamus and for Plenary Jurisdiction, thus rejecting appellants' claims as to the constitutional infirmity of the Pennsylvania Rules of Criminal Procedure.



## II. Montgomery County Cases.

**Equitable Publishing Company, Inc., et al.<sup>5</sup> v. The Honorable Robert W. Honeyman; and Equitable Publishing Company, Inc., et al. v. The Honorable Lawrence A. Brown.**

**Montgomery Publishing Company<sup>6</sup> v. The Honorable Robert W. Honeyman; and Montgomery Publishing Company v. The Honorable Lawrence A. Brown.**

These actions were filed in connection with two separate criminal trials pending in the Court of Common Pleas of Montgomery County, Pennsylvania: *Commonwealth v. John Palmer*, No. 149-77 and *Commonwealth v. Larry J. Phillips*, No. 5060-76. The defendant in the *Palmer* case was a policeman charged with the kidnap-murder of a young girl. The defendant in *Phillips* was accused of murdering a Montgomery County policeman. In both cases, the trial courts entered orders, pursuant to the Pennsylvania Rules of Criminal Procedure, which closed the courtrooms to the press and public during pretrial hearings, sealed and impounded all records of the hearings, and prohibited parties, attorneys, police officers, prospective

### 5. The parties below were:

Equitable Publishing Company, Inc., publisher of *The North Penn Reporter* of Lansdale, Montgomery County, Pennsylvania and *The Town and Country* of Pennsburg, Montgomery County, Pennsylvania, and owner and operator of radio station WNPV of Lansdale, Montgomery County, Pennsylvania;

The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter; The Pennsylvania Newspaper Publishers Association; and The Pennsylvania Society of Newspaper Editors, professional associations of Pennsylvania journalists.

6. Montgomery Publishing Company is the publisher of ten newspapers distributed in Montgomery County, Pennsylvania.

witnesses and others from discussing or commenting about the cases. Petitions to Vacate the trial courts' orders, raising the identical issues as in *Philadelphia Newspapers, Inc. v. Jerome*, were filed in each action. These Petitions were denied for lack of standing. Thereafter, Petitions for Mandamus and/or Prohibition and Petitions for Assumption of Plenary Jurisdiction were filed with the Supreme Court of Pennsylvania. All Petitions were denied without opinion on June 20, 1977.

## THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

### I. Rules of Criminal Procedure Mandating Closed Pretrial Suppression Hearings and Impounded Court Records Based Solely on the Request of the Defendant, Without Hearing or Any Finding of a Potential for Prejudice, Violate Appellants' Fundamental Constitutional Rights.

In *Nebraska Press Assoc. v. Stuart*, 427 U. S. 539 (1976), this Court specifically left undecided issues relating to (a) the validity of the closing of pretrial proceedings with the consent of the defendant, and (b) judicially imposed restraints on lawyers and others. *Id.*, 427 U. S. at 564, n. 8. At issue here are cases in which, during a very brief period of time, three separate trial courts in important criminal prosecutions closed pretrial hearings, sealed court records and imposed broad restraining orders on attorneys and others, in reliance upon procedural rules permitting action merely upon motion of the defendant, affording no hearing to the parties excluded and foreclosed from access to the news. The courts below gave no consideration to less restrictive methods of preserving the criminal defendant's right to a fair trial, such as impaneling and sequestering a jury prior to the pretrial suppression hearing.

It is imperative for this Court to take these appeals and decide whether, and if so, when and under what circumstances pretrial proceedings in criminal cases may be closed in response to assertions of possible prejudicial publicity. Courts throughout the country, in their zealous and frequently misguided desire to protect the Sixth Amendment rights of criminal defendants, have been closing courtrooms and sealing court records with dangerously increasing frequency. The limits of a trial court's

power to deny public access to information concerning crucial stages of the criminal process must be tested, and a decision on these appeals, after full briefing and argument, is necessary for the preservation of fundamental First Amendment rights.

By denying appellants' Petitions, the Pennsylvania Supreme Court upheld the constitutionality of its own Rules which provide for the closing of suppression hearings and sealing of records at the whim of a defendant, without regard to the probability of any harm from publication and the interests of the public in open criminal judicial proceedings. Such blanket exclusion of the news media from judicial proceedings ignores the unique role of the media in reporting criminal trials and pre-trial proceedings, as recognized by this Court in *Cox Broadcasting Co. v. Cohn*, 420 U. S. 469, 491-92 (1975):

"[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations. Great responsibility is accordingly placed upon the news media to report fully and accurately the proceedings of government, and official records and documents open to the public are the basic data of governmental operations. Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally. With respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice."



See also, *Sheppard v. Maxwell*, 384 U. S. 333, 349-50 (1966); *Estes v. Texas*, 381 U. S. 532, 541-42, *reh. den.* 382 U. S. 875 (1965); *Craig v. Harney*, 331 U. S. 367, 374 (1947).

It is meaningless to say that the press is free to publish truthful information about criminal proceedings when press and public can be and are denied access to the courtroom and to the official records of the proceedings therein, so that information about important judicial proceedings cannot be gathered and reported to the public at large.

Few traditions in this country have greater strength than that of the administration of justice before the public and the press. Only recently have we seen the wide assault on that tradition exemplified by the orders in these cases. The foundation for the tradition of public trials and pre-trial proceedings was succinctly described by this Court in *Re Oliver*, 333 U. S. 257, 268-270 (1948):

"The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the *lettre de cachet*. All of these institutions obviously symbolized a menace to liberty. . . . The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power.'"

More recently, in *Craig v. Harney*, *supra*, 331 U. S. at 374, this Court declared:

7. Pretrial hearings are an integral part of the "trial". See *Kirby v. Illinois*, 406 U. S. 682, 689-90 (1972); *United States ex rel. Bennett v. Rundle*, 419 F. 2d 599 (3d Cir. 1969) (en banc); *United States v. Clark*, 475 F. 2d 240 (2d Cir. 1973).

"A trial is a public event. What transpires in the courtroom is public property. . . . Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it."

In an action like the *Boyle* murder retrial involving the former head of one of the nation's most powerful labor unions, or in entirely different factual contexts, as in the *Palmer* and *Phillips* cases, involving the murder of a policeman and a young girl, courts must fully investigate the potential for prejudice prior to entering orders restricting the public's access to court proceedings. In all of these actions, each with entirely different facts, the trial courts entered virtually identical orders at the mere request of the defendants. Secret or closed judicial proceedings are the antithesis of the orderly operation of our public institutions. Secrecy breeds suspicion, distrust and rumor, or, what may be worse, encourages public apathy and indifference. Public confidence in the administration of justice is directly served by judicial proceedings open to public scrutiny. Numerous courts throughout the country have held that the public has a cognizable constitutional interest in keeping trials open.<sup>8</sup> The First and Sixth Amendments command that, absent extraordinary circum-

8. See, e.g., *United States ex rel. Lloyd v. Vincent*, 520 F. 2d 1272, 1274 (2d Cir.), *cert. denied* 423 U. S. 937 (1975); *Lewis v. Peyton*, 352 F. 2d 791, 792 (4th Cir. 1965); *United States v. Kobli*, 172 F. 2d 919, 924 (3d Cir. 1949); *United States v. Sorrentino*, 175 F. 2d 721, 722-23 (3d Cir.), *cert. denied* 338 U. S. 868, *reh. denied* 338 U. S. 896 (1949); *United States ex rel. Mayberry v. Yeager*, 321 F. Supp. 199, 204 (D. N. J. 1971); *Gannett Company v. Depasquale*, — N. Y. S. 2d — (New York Supreme Court, Appellate Division 1976); *Hearst v. Cholakos*, — N. Y. S. 2d — (New York Supreme Court, Appellate Division (1976)); *State ex rel. Dayton Newspapers v. Phillips*, 46 Ohio St. 2d 457, 351 N. E. 2d 127



stances, criminal proceedings be public. The criminal defendant himself has no right to compel a private trial. See *Singer v. United States*, 380 U. S. 24, 35 (1965).

The issues raised by the instant appeal are of profound national importance. When and under what circumstances the criminal process can be closed from public view is an issue of immense concern to courts throughout the country, seeking appropriate methods to insure fair and impartial trials while preserving and protecting the interests of the public at large. The Pennsylvania Rules of Criminal Procedure, which permit and indeed mandate closed proceedings at the mere request of a defendant cannot meet constitutional muster. In numerous decisions, this Court has recognized that "pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial." *Nebraska Press Assoc. v. Stuart*, *supra*, 427 U. S. at 554. See also, *Stroble v. California*, 343 U. S. 181 (1952); *Beck v. Washington*, 369 U. S. 541 (1962); *Murphy v. Florida*, 421 U. S. 794 (1975). At the very least, therefore, this Court should, after full hearing of these appeals preclude the closing of criminal proceedings unless it can be demonstrated, by the clear and convincing evidence<sup>9</sup>

8. (Cont'd.)

(1976); *State ex rel. Gore Newspaper Company v. Tyson*, 313 So. 2d 777 (Fla. App. 4th Dist. 1975); *Citizen Publishing Company v. Buchanan*, 22 Ariz. App. 521 (1974); *People v. Hinton*, 31 N. Y. 2d 71, 75, 334 N. Y. S. 2d 885, 286 N. E. 2d 265 (1972), *cert. denied* 410 U. S. 911 (1973); *Oliver v. Postel*, 30 N. Y. 2d 171, 331 N. Y. S. 2d 207 (1972); *Phoenix Newspapers, Inc. v. Jennings*, 107 Ariz. 557, 490 P. 2d 563 (1971); *Oxnard Publishing Co. v. Superior Court*, 68 Cal. Rptr. 83 (Ct. App. 1968); *Phoenix Newspapers, Inc. v. Superior Court*, 101 Ariz. 257, 418 P. 2d 594 (en banc 1966); *E. W. Scripps Co. v. Fulton*, 100 Ohio App. 157, 125 N. E. 2d 896 (1955), *appeal dismissed as moot*, 164 Ohio 261, 130 N. E. 2d 701 (Sup. Ct. 1955); *Kirtowsty v. Superior Court*, 143 Cal. Rptr. 2d 745, 300 P. 2d 163 (Ct. App. 1956).

9. This Court has adopted the "clear and convincing evidence" standard in other contexts involving protection of First Amendment

necessary to overcome the heavy presumption against constitutional validity<sup>10</sup> of any order restricting publication of information ordinarily in the public domain, that (a) the nature and extent of pretrial publicity creates a clear and immediate threat to the fairness of the trial; and (b) no other available measures will be adequate to preserve defendant's right to a fair trial.

The public's fundamental right to be informed of the criminal process is thus involved in this case. In view of the sweeping effect of the Pennsylvania Rules of Criminal Procedure here challenged, which place a mantle of secrecy around integral portions of criminal trials, it is of the utmost importance that this Court take and decide this case. Further, in view of the nationwide dilemma faced by trial courts in dealing with prejudicial publicity and efforts of defense counsel to foreclose public proceedings, it is imperative for the court to hear and decide this appeal, and to establish guidelines for the co-existence of the rights and interests of criminal defendants and those of the public at large.

**II. As Applied, The Pennsylvania Rules of Criminal Procedure Amount to a Prior Restraint on Free Speech and Press by Precluding all Access to Information About Pending Criminal Trials.**

Although no order was entered by the trial courts directly enjoining publication by the news media, all possible sources of information concerning the cases were

9. (Cont'd.)

freedoms. See, *Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 342 (1974); *New York Times Co. v. Sullivan*, 376 U. S. 254, 285-86 (1964).

10. *Times-Picayune Publishing Corp. v. Schulingkamp*, 419 U. S. 1301, 1307 (1974) (In Chambers Opinion of Powell, J.); *New York Times Co. v. United States*, 403 U. S. 713, 714 (1971).

effectively closed to them. Such a pervasive denial of access to news about criminal proceedings constitutes, in effect, a prior restraint upon freedom of expression. Freedom of the press, if it is to mean anything, must include the right to publish contemporaneous accounts of criminal proceedings. That right is lost when, as in the cases now on appeal, the ability to publish is lost due to a total inability to gain information.

Long ago James Madison wrote, "A popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both." 9 *Writings of James Madison* 103 (G. Hurst ed. 1910) (emphasis added). See also, Micklejohn, *Free Speech and Its Relation to Self-Government*, at 39 (1948).

This Court has repeatedly emphasized that news-gathering and the right to receive information are protected by the First Amendment for: "without some protection for seeking out the news, freedom of the press could be eviscerated". *Branzburg v. Hayes*, 408 U. S. 665, 681, 707 (1972). See also, *Red Lion Broadcasting Co. v. FCC*, 395 U. S. 367, 390 (1969); *Stanley v. Georgia*, 394 U. S. 557, 564 (1969); *Lamont v. Postmaster General*, 381 U. S. 321 (1965). The restrictions imposed by the trial courts' orders effectively denied appellants access to any information concerning the pending criminal proceedings—the courtroom was closed, all records, motions and papers filed were sealed and impounded, and all persons having any connection with the case were prohibited from disclosing any information. This cloak of secrecy was and is so extensive as to conceal from the public even the date on which trial is scheduled to commence.

The impounding of all records made of a pretrial suppression hearing is mandated by Pennsylvania Rule of

Criminal Procedure 323(g). The Pennsylvania Supreme Court has approved the impounding of all records in a celebrated criminal proceeding at the mere request of the defendant without benefit of any hearing for the parties directly affected by the rulings.<sup>11</sup>

By contrast to the Pennsylvania courts, the Court of Appeals for the Fourth Circuit, in reviewing an order impounding papers filed in the criminal proceedings against Governor Mandel, has held the impoundment order to be "an unnecessary prior restraint on freedom of the press," and issued a writ of mandamus vacating the impoundment order. *In Re Washington Post Company, et al.*, United States Court of Appeals for the Fourth Circuit, No. 76-1695, Writ of Mandamus issued July 19, 1976. See also, *Forcade v. Knight*, 416 F. Supp. 1025 (D. D. C. 1976); *Westinghouse Broadcasting Company, Inc. v. Dukakis*, 409 F. Supp. 895 (D. Mass. 1976); *In Re Midwest Milk Monopolization Litigation*, 405 F. Supp. 118 (W. D. Mo. 1975); *Borreca v. Fasi*, 369 F. Supp. 906 (D. Haw. 1974); *Charlottesville Newspapers, Inc. v. Berry*, 215 Va. 116, 206 S. E. 2d 267 (1974).

Furthermore, the all-inclusive prohibition on dissemination of information concerning the trial or pre-trial proceedings constitutes a prior restraint. In *CBS, Inc. v. Young*, 522 F. 2d 234, 240 (6th Cir. 1975), an order prohibiting those involved in a highly publicized criminal case from discussing the case with any member of the press or public was held to be "an extreme example of a prior restraint upon freedom of speech and expression . . . ." See also, *Chicago Council of Lawyers v. Bower*, 522 F. 2d 242 (7th Cir. 1975).

11. In *Boyle*, all records in the action, including but not limited to records of the suppression hearing, were sealed at the request of defendant.



The orders entered by the trial courts denied any access to information concerning the pending criminal trials. The orders and the Pennsylvania Rules pursuant to which they were issued are clearly intended to restrict the flow of information, as distinguished from the restrictions upheld in *Pell v. Procunier*, 417 U. S. 817 (1974) and *Saxbe v. The Washington Post Co.*, 417 U. S. 843 (1974). Unquestionably, a trial court has the power to enter appropriate protective orders where necessary to avoid a clear and imminent threat to the administration of justice and to preserve the defendant's right to a fair trial. Where, as here, however, the orders are tantamount to the imposition of a prior restraint, denying any access to and thus precluding publication of any information concerning the criminal trials, their entry must at the very least be supported by the same standards necessary to support any prior restraint. See *Nebraska Press Assoc. v. Stuart*, *supra*. Moreover, the Pennsylvania Rules of Criminal Procedure here challenged permit the entry of such orders without so much as a hearing, let alone the showing necessary to overcome the heavy presumption of invalidity. Accordingly, it is essential for this Court to declare the invalidity of the Pennsylvania Rules of Criminal Procedure which as applied to these proceedings permit the imposition of unnecessary prior restraints on publication without affording the slightest measure of procedural due process to those restrained.

It seems impossible to overstate the importance of the issues raised by the imposition of sweeping restrictive orders without any showing as to their necessity or validity. The Pennsylvania Supreme Court has permitted the envelopment in total secrecy of significant judicial proceedings, drastically curtailing the constitutional rights of the press and public in the name of a "fair trial".

### CONCLUSION.

Based upon the foregoing arguments and authorities it is requested that that Court note jurisdiction in this appeal, receive full briefs on the merits, and hear oral arguments in order to resolve the substantial federal questions here involved.

Respectfully submitted,

*Of Counsel:*

ARTHUR E. NEWBOLD, IV,  
DECHERT, PRICE & RHOADS,  
3400 Centre Square West,  
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DAVID H. MARION,  
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Philadelphia, Pennsylvania.  
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(215) 665-990

*Attorneys for Appellants*



**EXHIBIT 1**

**SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

SALLY MRVOS  
Prothonotary  
LAURA E. LITCHARD  
Deputy Prothonotary

Philadelphia, 19107

May 25, 1977

David H. Marion, Esq.  
Kohn, Savett, Marion & Graf  
1214 IVB Building  
1700 Market Street  
Philadelphia, Penna. 19103

Re: Philadelphia Newspapers, Inc., et al., Petitioners  
v. Honorable Domenic D. Jerome, No. 384,  
Miscellaneous Docket No. 21 -

Dear Mr. Marion:

This is to advise that the following Order has been  
endorsed on both the Petition for Writ of Mandamus and  
Prohibition and the Petition for Plenary Jurisdiction, filed  
in the above captioned matter:

"May 23, 1977.

Denied.

s/ By the Court."

Very truly yours,

/s/ SALLY MRVOS, cl  
Prothonotary

SM/c

cc: Hon. Domenic D. Jerome  
Jonathan Vipond, III, Esq.  
Richard A. Sprague, Esq.  
A. Charles Peruto, Esq.

**EXHIBIT 2**

RECEIVED JUNE 23, 1977

SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICTSALLY MRVOS  
Prothonotary  
LAURA E. LITCHARD  
Deputy Prothonotary

Philadelphia, 19107

June 22, 1977

Arthur E. Newbold, IV, Esquire  
Dechert, Price & Rhoads  
3400 Centre Square West  
Philadelphia, Pennsylvania 19102Re: Equitable Publishing Company, Inc., et al.,  
Petitioners, v. The Honorable Robert W.  
Honeyman, etc., No. 399 Miscellaneous  
Docket No. 21

Dear Mr. Newbold:

The Court has entered the following Order on the  
Petition for Assumption of Plenary Jurisdiction and on  
the Petition for Writ of Mandamus and Prohibition filed  
in the above-captioned matter:

June 20, 1977

Denied.

By the Court

Very truly yours,  
SALLY MRVOS  
ProthonotaryBy /s/ LAURA E. LITCHARD  
Laura E. Litchard  
Deputy Prothonotary

LEL:cl

cc: Ross Weiss, Esquire  
Vincent J. Fumo, Esquire  
Jonathan Vipond, III, Esquire**EXHIBIT 3**SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICTSALLY MRVOS  
Prothonotary  
LAURA E. LITCHARD  
Deputy Prothonotary

Philadelphia, 19107

June 23, 1977

Roberta S. Staats, Esquire  
Morgan, Lewis & Bockius  
123 South Broad Street  
Philadelphia, Pa. 19109Re: Montgomery Publishing Company, Petitioner,  
v. The Honorable Robert W. Honeyman, etc.,  
No. 400 Miscellaneous Docket No. 21

Dear Ms. Staats:

The Court has entered the following Order on the  
Petition for Review in the Nature of Prohibition filed in  
the above-captioned matter:

June 20, 1977

Denied.

By the Court

Very truly yours,  
SALLY MRVOS  
ProthonotaryBy: /s/ LAURA E. LITCHARD  
Laura E. Litchard  
Deputy Prothonotary

LEL:cl

cc: Ross Weiss, Esquire  
Vincent J. Fumo, Esquire  
Jonathan Vipond, III, Esquire

**EXHIBIT 4**

RECEIVED JUNE 24, 1977

SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICTSALLY MRVOS  
Prothonotary  
LAURA E. LITCHARD  
Deputy Prothonotary

Philadelphia, 19107

June 23, 1977

Arthur E. Newbold, IV, Esquire  
Dechert, Price & Rhoads  
3400 Centre Square West  
1500 Market Street  
Philadelphia, Pa. 19102Re: Equitable Publishing Company, Inc., et al.,  
Petitioners, v. The Honorable Lawrence A.  
Brown, etc.—No. 406 Miscellaneous Docket  
No. 21

Dear Mr. Newbold:

The Court has entered the following Order on both  
the Petition for Assumption of Plenary Jurisdiction and  
the Petition for Writ of Mandamus and Prohibition filed  
in the above-captioned matter:

June 20, 1977

Denied.

By the Court

Very truly yours,  
SALLY MRVOS  
ProthonotaryBy /s/ LAURA E. LITCHARD  
Laura E. Litchard  
Deputy Prothonotary

LEL:cl

cc: Hon. Robert P. Kane  
Joseph L. Santaguida, Esquire  
William T. Nicholas, Esquire  
Jonathan Vipond, III, Esquire**EXHIBIT 5**SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICTSALLY MRVOS  
Prothonotary  
LAURA E. LITCHARD  
Deputy Prothonotary

Philadelphia, 19107

June 23, 1977

Roberta S. Staats, Esquire  
Morgan, Lewis & Bockius  
123 South Broad Street  
Philadelphia, Pa. 19109Re: Montgomery Publishing Company, Petitioner,  
v. The Honorable Lawrence A. Brown, etc.  
No. 407 Miscellaneous Docket No. 21

Dear Ms. Staats:

The Court has entered the following Order on both  
the Application Requesting That This Court Assume  
Plenary Jurisdiction and on the Petition for Review in the  
Nature of Prohibition filed in the above-captioned matter:

June 20, 1977

Denied.

By the Court

Very truly yours,  
SALLY MRVOS  
ProthonotaryBy: /s/ LAURA E. LITCHARD  
Laura E. Litchard  
Deputy Prothonotary

LEL:cl

cc: William T. Nicholas, Esquire  
Joseph C. Santaguida, Esquire  
Jonathan Vipond, III, Esquire



**EXHIBIT 6**


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Date filed: August 5, 1977

IN THE  
SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

---

No. 384 Miscellaneous Docket No. 21

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PHILADELPHIA NEWSPAPERS, INC., et al.,  
*Petitioners*

v.

THE HONORABLE DOMENIC D. JEROME, Judge of  
the Court of Common Pleas of Delaware County,  
*Respondent*

NOTICE OF APPEAL

---

Notice is hereby given that Philadelphia Newspapers, Inc., The Associated Press, Central States Publishing, Inc., The Pennsylvania Newspaper Publishers Association, The Pennsylvania Society of Newspaper Editors, and Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, Petitioners above named, hereby

appeal pursuant to 28 U. S. C. § 1257(2) to the Supreme Court of the United States from the Judgment and Order of this Court, dated May 23, 1977, denying the Petition for Writ of Mandamus and Prohibition.

/s/ SAMUEL E. KLEIN  
DAVID H. MARION  
SAMUEL E. KLEIN  
KOHN, SAVETT, MARION  
& GRAF, P. C.  
1214 IVB Building  
1700 Market Street  
Philadelphia, Pennsylvania  
19103  
(215) 665-9900  
*Attorneys for Petitioners-  
Appellants*

Dated: August 5, 1977

**EXHIBIT 7**


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Date Filed: August 5, 1977

IN THE  
SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

---

No. 399 Miscellaneous Docket No. 21

---

EQUITABLE PUBLISHING COMPANY, INC., et al.,  
*Petitioners*

v.

THE HONORABLE ROBERT W. HONEYMAN, Judge  
of the Court of Common Pleas of Montgomery County,  
*Respondent*

NOTICE OF APPEAL

---

Notice is hereby given that Equitable Publishing Company, Inc., The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, The Pennsylvania Newspaper Publishers' Association, and The Pennsylvania Society of Newspaper Editors, Petitioners above named, hereby appeal pursuant to 28 U. S. C. § 1257(2) to the Supreme Court of the United States from the Judgment and Order of this Court, dated June 20,

1977, denying the Petition for Writ of Mandamus and Prohibition.

/s/ SAMUEL E. KLEIN  
DAVID H. MARION  
SAMUEL E. KLEIN  
KOHN, SAVETT, MARION  
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1214 IVB Building  
1700 Market Street  
Philadelphia, Pennsylvania  
19103  
(215) 665-9900  
*Attorneys for Petitioners-  
Appellants*

Dated: August 5, 1977

**EXHIBIT 8**


---

Date Filed: August 5, 1977

IN THE  
SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

---

No. 400 Miscellaneous Docket No. 21

---

MONTGOMERY PUBLISHING COMPANY,  
*Petitioner*

v.

THE HONORABLE ROBERT W. HONEYMAN, Judge  
of the Court of Common Pleas of Montgomery County,  
*Respondent*

NOTICE OF APPEAL

---

Notice is hereby given that Montgomery Publishing Company, Petitioner above named, hereby appeals pursuant to 28 U. S. C. § 1257(2) to the Supreme Court of the United States from the Judgment and Order of this

Court, dated June 20, 1977, denying the Petition for Writ of Mandamus and Prohibition.

/s/ SAMUEL E. KLEIN  
DAVID H. MARION  
SAMUEL E. KLEIN  
KOHN, SAVETT, MARION  
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1214 IVB Building  
1700 Market Street  
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19103  
(215) 665-9900

*Attorneys for Petitioner-  
Appellant*

Dated: August 5, 1977



## EXHIBIT 9

\_\_\_\_\_  
Date filed: August 5, 1977

IN THE  
SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

\_\_\_\_\_

No. 406 Miscellaneous Docket No. 21

\_\_\_\_\_

EQUITABLE PUBLISHING COMPANY, INC., et al.,  
*Petitioners*

v.

THE HONORABLE LAWRENCE A. BROWN, Judge of  
the Court of Common Pleas of Montgomery County,  
*Respondent*

NOTICE OF APPEAL

\_\_\_\_\_

Notice is hereby given that Equitable Publishing Company, Inc., The Society of Professional Journalists, Sigma Delta Chi, Greater Philadelphia Chapter, The Pennsylvania Newspaper Publishers' Association and The Pennsylvania Society of Newspaper Editors, Petitioners above named, hereby appeal pursuant to 28 U. S. C. § 1257(2) to the Supreme Court of the United States from

the Judgment and Order of this Court, dated June 20, 1977, denying the Petition for Writ of Mandamus and Prohibition.

/s/ SAMUEL E. KLEIN  
DAVID H. MARION  
SAMUEL E. KLEIN  
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1214 IVB Building  
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(215) 665-9900  
*Attorneys for Petitioners-  
Appellants*

Dated: August 5, 1977

**EXHIBIT 10**

—  
 DATE FILED August 5, 1977  
 IN THE  
 SUPREME COURT OF PENNSYLVANIA  
 EASTERN DISTRICT

—  
 No. 407 Miscellaneous Docket No. 21

—  
 MONTGOMERY PUBLISHING COMPANY,  
*Petitioner*

v.

THE HONORABLE LAWRENCE A. BROWN, Judge of  
 the Court of Common Pleas of Montgomery County,  
*Respondent*

NOTICE OF APPEAL

—

Notice is hereby given that Montgomery Publishing Company, Petitioner above named, hereby appeals pursuant to 28 U. S. C. § 1257(2) to the Supreme Court of the United States from the Judgment and Order of this

Court, dated June 20, 1977, denying the Petition for Writ of Mandamus and Prohibition.

/s/ SAMUEL E. KLEIN  
 DAVID H. MARION  
 SAMUEL E. KLEIN  
 KOHN, SAVETT, MARION  
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 1700 Market Street  
 Philadelphia, Pennsylvania  
 19103  
 (215) 665-9900

*Attorneys for Petitioner-  
 Appellant*

Dated: August 5, 1977